

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

VARTAURSE CORNELIOUS PENNS # 106945

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:16cv92-LG-RHW

WILLIAM JORDAN, *et al.*

DEFENDANTS

REPORT AND RECOMMENDATION

This *pro se* prisoner civil rights case came before the Court for a duly noticed *Spears*/omnibus hearing scheduled for Thursday, December 8, 2016 at 9:30 a.m., before United States Magistrate Judge Robert H. Walker at the United States Courthouse in Gulfport, MS in Courtroom 881. The docket reflects, and the Court finds, that on September 19, 2016, Deputy Clerk Sandra Ryan properly notified Vartaurse Cornelious Penns of the hearing by mailing copies of Order [52] setting the hearing and the notice of hearing to Penns' address of record at Stone County Regional Correctional Facility.

Since Penns filed this action on March 10, 2016, the Court has repeatedly warned him that his failure to keep the Court apprised of his current address or to comply with any order of the Court might result in dismissal of his lawsuit. See Orders [3], [7], [8], [14], [18], [19], [21]. However, when the Court convened for the scheduled hearing, Penns failed to appear as ordered. Jessica Malone, Kristi Rogers Brown and A. Malcolm N. Murphy, Attorneys for the numerous defendants, were all present for the hearing at the appointed time in accordance with the Court's order setting the hearing.

Deputy Ryan contacted court security officers to ascertain whether Penns had entered the Courthouse, and received a negative response. After waiting until after 10:00 a.m., the undersigned called Plaintiff's name three times in open court with no response, and Deputy Clerk

Ryan went into the hallway outside the courtroom and called his name three times with no response. Deputy Ryan further stated for the record that on December 2, 2016, she had received notification from Captain Rogers of Stone County Regional Correctional Facility that Penns had been paroled October 3, 2016. Penns has filed no change of address, nor had any contact with the Court since that time.

RECOMMENDATION

The undersigned recommends that this case be dismissed due to Plaintiff's failure to comply with the Court's order to appear for the *Spears*/omnibus hearing on December 8, 2016.

NOTICE OF RIGHT TO APPEAL/OBJECT

After being served a copy of a Report and Recommendation, a party has 14 days to serve on the other parties, submit to the assigned District Judge, and file with the clerk of court his written objections to the Report and Recommendation. The objecting party must specifically identify the findings, conclusions, and recommendations to which he objects. The District Court need not consider frivolous, conclusive, or general objections. An opposing party has seven days after being served with objections, to serve and file a response or to notify the District Judge he does not intend to respond to the objections. Except on grounds of plain error, a party cannot attack on appeal any proposed factual finding or legal conclusion accepted by the District Court to which he did not timely file objections. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Signed, this the 8th day of December, 2016.

/s/ *Robert H. Walker*
ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE